

28 USC §157(d)
11 USC §1112(b)

In re Marquam Investment Corp.

Case No. 383-01488-H11 USDC No. CV 88-915-RE 3-27-92

The District Court withdrew reference of this chapter 11 case from the bankruptcy court and converted it to chapter 7 because the debtor was unable to effectuate a plan and liquidation of the assets seemed to be the only alternative. The case was then "remanded" (referred?) back to the bankruptcy court for further proceedings under chapter 7.

FILED

Mar 27 4 29 PM '92

CP
mfe
LH
led
3/31/92

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re) Dist. Ct. CV 88-915-RE
MARQUAM INVESTMENT CORP.,) Bankruptcy Ct. No.
Debtor.) 383-01488
) OPINION

REDDEN, J.

In this bankruptcy proceeding, Suzan Brewer, a creditor, and John B. Franzwa, the trustee, move to withdraw the reference to the bankruptcy court, convert this case from a chapter 11 to a chapter 7 proceeding, and remand to the bankruptcy court. The debtor-in-possession, Marquam Investment Corp., opposes the motions, as do creditors Warde Erwin and LaVelle Mullenex.

I grant the motions. This opinion gives my reasons for doing so. The background of this case is outlined in Brewer v. Erwin & Erwin, P.C. (In re Marquam Investment Corp.), 942 F.2d 1462, 1464-65 (9th Cir. 1991).

/ / /

1 - OPINION

P92-10(5)

84

Certified to be a true and correct
copy of the original filed in my office.
Dated 3/30/92
Donald M. Cinnamon, Clerk
By C. Priestley Deputy

(31)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DISCUSSION

I. Withdrawal of Reference under Section 157(d)

The district court may withdraw a case from the bankruptcy court at any time for cause. 11 U.S.C. § 157(d); In re Hall, Bayoutree Assocs., Ltd., 939 F.2d 802, 805 (9th Cir. 1991). Section 157(d) provides in part:

The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown.

The statute does not define "cause." In determining whether cause exists, the court should consider the goals of "promoting uniformity in bankruptcy administration, reducing forum shopping and confusion, fostering the economical use of the debtors' and creditors' resources, and expediting the bankruptcy process." Holland Am. Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985).

Here, withdrawing the reference to the bankruptcy court ensures that the motions to convert are properly before this court. Judicial economy, conserving the parties' resources, and expediting bankruptcy proceedings justify withdrawing the reference from the bankruptcy court.

Warde Erwin, one of the creditors, contends that the motions should have been filed initially in bankruptcy court. However, because I may withdraw reference on my own motion, Erwin's procedural objections are moot. See In re American Community Servs., Inc., 86 B.R. 681, 683 (D. Utah 1988) (when motion to withdraw filed late, court ruled on its own motion

1 to withdraw); cf. Assmus v. Southmark Corp., 82 B.R. 587, 589
2 (D. Utah 1988) (party seeking to withdraw reference must file
3 motion in bankruptcy court first and move for an order
4 forwarding motion to district court).

5 II. Conversion to Chapter 7 and Remand to the Bankruptcy
6 Court

7 The trustee and Brewer move for conversion to chapter 7.
8 The debtor-in-possession opposes conversion.

9 Under 11 U.S.C. § 1112(b), the court has broad discretion
10 to convert a chapter 11 case to a chapter 7 case. In re
11 Smith, 77 B.R. 496, 500 (Bankr. E.D. Pa. 1987). Section
12 1112(b) provides in part:

13 (b) Except as provided in subsection (c) of
14 this section, on request of a party in interest,
15 and after notice and a hearing, the court may
16 convert a case under this chapter to a case under
17 chapter 7 of this title or may dismiss a case
under this chapter, whichever is in the best
interest of creditors and the estate, for cause,
including--

18 (1) continuing loss to or diminution of the
19 estate and absence of a reasonable likelihood of
rehabilitation;

20 (2) inability to effectuate a plan;

21 (3) unreasonable delay by the debtor that is
prejudicial to creditors;

22 (4) failure to propose a plan under section
23 1121 of this title within any time fixed by the
court;

24 (5) denial of confirmation of every proposed
25 plan and denial of additional time for filing
another plan or a modification of a plan;

26 (6) revocation of an order of confirmation
under section 1144 of this title, and denial of

1 confirmation of another plan or a modified plan
2 under section 1129 of this title;

3

4 The statute's list of factors is not exhaustive. Hall v.
5 Vance, 887 F.2d 1041, 1044 (10th Cir. 1989). The court may
6 consider other factors, using its equitable powers to reach
7 appropriate results in individual cases. Smith, 77 B.R. at
8 500.

9 The moving party must show cause for conversion or
10 dismissal. In re Macon Prestressed Concrete, 61 B.R. 432, 436
11 (Bankr. M.D. Ga. 1986). The court should resolve doubts in
12 favor of the debtor, but must consider the creditors'
13 interests. Id.

14 Conversion to chapter 7 is justified here because the
15 debtor has been unable to effectuate a plan. See 11 U.S.C. §
16 1112(b)(2). Failure to file a plan after a reasonable time
17 indicates an inability to do so, regardless of the reason for
18 the failure. Hall, 887 F.2d at 1044. Brewer now appears to
19 be the largest creditor, and she opposes continuing this case
20 as a chapter 11 proceeding. See In re Rundlett, No. 91 B
21 21781, ___ B.R. ___, 1992 WL 25043, at *5-6 (Bankr. S.D.N.Y.
22 Feb. 10, 1992) (conversion to chapter 7 appropriate when 83%
23 of claimants would not accept debtor's plan).

24 Conversion is also justified because the debtor's assets
25 must be liquidated. "[C]onversion is the obvious choice" when
26 a trustee must be appointed and there is no business left to
run but only a liquidation to administer. In re Fiesta Homes

1 of Ga., Inc., 125 B.R. 321, 326 (Bankr. S.D. Ga. 1990).

2 Although chapter 11 permits liquidation, the administrative
3 expenses are usually lower in chapter 7 liquidations. In re
4 Graf Bros., Inc., 19 B.R. 269, 270 (Bankr. D. Me. 1982).

5 Conversion to chapter 7 and remand to the bankruptcy court is
6 the most efficient and equitable means of resolving this case.

7 CONCLUSION

8 The trustee's motion to convert (#50) and Brewer's motion
9 to convert (#51) are granted.

10 DATED this 27 day of March, 1992.

11
12 
13 JAMES A. REDDEN
14 United States District Judge